

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Ogden Post Office
Ogden, AR

Docket No. A2012-31

ORDER AFFIRMING DETERMINATION

(Issued February 9, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012”.¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On October 24, 2011, Sandra Furlow, Mayor of Ogden, filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Ogden, Arkansas post office (Ogden post office). Additional petitions for review were received from Mary Anne Morrison, et al.; Richard Furlow, et al.; Sandra Furlow, et al.² The Final Determination to close the Ogden post office is affirmed.³

II. PROCEDURAL HISTORY

On October 28, 2011, the Commission established Docket No. A2012-31 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

² Petition for Review received from Sandra Furlow, Mayor of Ogden, regarding the Ogden, Arkansas Post Office 71853, October 24, 2011; Petition for Review received from Mary Anne Morrison, et al. regarding the Ogden, Arkansas Post Office 71853, October 25, 2012; Petition for Review received from Richard Furlow, et al. regarding the Ogden, Arkansas Post Office 71853, October 25, 2012; Petition for Review received from Sandra Furlow, et al. regarding the Ogden, Arkansas Post Office 71853, October 25, 2012; (collectively referred to as Petitions).

³ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁴ Order No. 936, Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 28, 2011.

On November 8, 2011, the Postal Service filed the Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

Petitioners filed a participant statement supporting their Petitions.⁷ On January 3, 2012, the Public Representative filed a reply brief.⁸

III. BACKGROUND

The Ogden post office provides retail postal services and service to 184 post office box customers. Final Determination at 2. Seventy-two delivery customers are served through this office. *Id.* The Ogden post office, an EAS-11 level facility, provides retail service from 6:30 a.m. to 11:30 a.m. and 1:00 p.m. to 3:45 p.m., Monday through Friday, and is closed on Saturday. *Id.* Lobby access hours are 24 hours on Monday through Saturday. *Id.*

The postmaster position became vacant on January 2, 2010, when the Ogden postmaster retired. *Id.* A non-career officer-in-charge (OIC) was installed to operate the office. *Id.* at 5. Retail transactions average 32 transactions daily (37 minutes of retail workload). *Id.* at 2. Office receipts for the last 3 years were \$22,874 in FY 2008; \$17,668 in FY 2009; and \$17,032 in FY 2010. *Id.* There is one permit or postage meter

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, November 8, 2011 (Administrative Record). The Administrative Record includes, as Item No. 49, the Final Determination to Close the Ogden, AR Post Office and Continue to Provide Service by Rural Route Service (Final Determination). On December 19, 2011, the Postal Service filed an Addendum to Item No. 17 of the Administrative Record. United States Postal Service Notice of Filing of Addendum to the Administrative Record, December 19, 2011. The Commission's responsibility in adjudicating appeals of Postal Service determinations to close or consolidate post offices is limited to "the record before the Postal Service in the making of such determination[s]." 39 U.S.C. § 404(d)(5). The Addendum seeks to add post-record information for the Commission's consideration on appeal. By statute, the Commission is barred from considering any such materials and has not relied on the addendum in deciding this appeal.

⁶ United States Postal Service Comments Regarding Appeal, December 19, 2011 (Postal Service Comments).

⁷ Participant Statement received from the Residents and Customers of the Ogden, AR Post Office, November 23, 2011 (Participant Statement).

⁸ Reply Brief of the Public Representative, January 3, 2012 (PR Reply Brief).

customer. *Id.* By closing this office, the Postal Service anticipates savings of \$52,319 annually. *Id.* at 4.

After the closure, retail services will be provided by the Ashdown post office located approximately eight miles away.⁹ Delivery service will be provided by rural route service through the Ashdown post office. *Id.* The Ashdown post office is an EAS-18 level office, with retail hours of 9:00 a.m. to 4:30 p.m., Monday through Friday, and 9:00 a.m. to 11:30 a.m. on Saturday. *Id.* Two hundred seventy-one post office boxes are available. *Id.* The Postal Service will continue to use the Ogden name and ZIP Code. *Id.* at 3, Concern No. 1.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Ogden post office. Petitioners assert that the Postal Service failed to consider whether it will continue to provide a maximum degree of effective and regular postal services to the community. Petitions at 1; Participant Statement at 3. Petitioners question the security and convenience of conducting mail transactions via rural route service and the internet. *Id.* Petitioners also contend that the Postal Service's estimate of annual savings is inaccurate due to an ongoing lease obligation and the cost of replacement service. *Id.* Additionally, Petitioners suggest that the Postal Service should have considered alternatives to closure. *Id.* at 2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Ogden post office. Postal Service Comments at 2. The Postal Service believes the appeal raises two main issues: (1) the effect on postal services, and (2) the economic savings expected to result from discontinuing the Ogden post office. *Id.* at 1. The Postal Service asserts that it has given these and other

⁹ *Id.* at 2. MapQuest estimates the driving distance between the Ogden and Ashdown post offices to be approximately 7.6 miles (10 minutes driving time).

statutory issues serious consideration and concludes that the determination to discontinue the Ogden post office should be affirmed. *Id.* at 2.

The Postal Service explains that its decision to close the Ogden post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 6. The Postal Service contends that it will continue to provide regular and effective postal services to the Ogden community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, effect on the Ogden community, economic savings, and effect on postal employees. *Id.*

Public Representative. After careful review of the record, the Public Representative determined that the Postal Service followed applicable procedures, that the decision to close the Ogden Post Office is not arbitrary or capricious, and that the Postal Service's decision is supported by substantial evidence. PR Reply Brief at 5. He concludes that the Postal Service decision to close the Ogden post office should be affirmed. *Id.*

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record

that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* § 404(d)(5).

The record indicates the Postal Service took the following steps in providing notice of its intent to close. On May 27, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Ogden post office. Final Determination at 2. A total of 259 questionnaires were distributed to delivery customers. *Id.* Other questionnaires were made available at the retail counter. *Id.* A total of 105 questionnaires were returned. *Id.* On June 14, 2011, the Postal Service held a community meeting at the Ogden Community Center to address customer concerns. *Id.* One hundred seven customers attended. *Id.*

The Postal Service posted the proposal to close the Ogden post office with an invitation for comments at the Ogden and Ashdown post offices from June 25, 2011

through August 26, 2011. *Id* at 2. The Final Determination was posted at the same two post offices from September 29, 2011 through October 31, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: (1) the effect on the community; (2) the effect on postal employees; (3) whether a maximum degree of effective and regular postal service will be provided; and (4) the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Ogden, Arkansas is an incorporated community located in Little River County, Arkansas. Administrative Record, Item No. 16. The community is administered politically by the City of Ogden. *Id.* Police protection is provided by the Little River County Sheriff's Office. *Id.* Fire protection is provided by the Ogden Volunteer Fire Department. *Id.* The community is comprised of farmers, retirees, loggers and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Ogden community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Ogden post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 2-4.

The Postal Service asserts that a community's identity derives from the interest and vitality of its residents and their use of its name. Postal Service Comments at 12.

The record indicates that Ogden customers would be able to retain the Ogden name and ZIP Code in addresses. Final Determination at 3. The Postal Service also contends that it found no indication that the discontinuance would have an adverse effect on Ogden businesses. *Id.* at 4.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Ogden postmaster retired on January 2, 2010 and that an OIC has operated the Ogden post office since then. Final Determination at 2. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.* at 5.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Ogden post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Ogden customers. Postal Service Comments at 6. It asserts that customers of the closed Ogden post office may obtain retail services at the Ashdown post office located eight miles away. Final Determination at 2. Delivery service will be provided by rural route service through the Ashdown post office. *Id.* The Ogden post office box customers may obtain Post Office Box Service at the Ashdown post office, which has 271 boxes available. *Id.*

For customers choosing not to travel to the Ashdown post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 8. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioners question the security of receiving mail via rural delivery service. Petitions at 1; Participant Statement at 3. The Postal Service explains that customers may lock their mailboxes and that cluster box units offer the security of locked mailboxes as well. Postal Service Comments at 8.

Petitioners also suggest that the Postal Service should have considered alternatives to closure. Participant Statement at 2. The Postal Service contends that rural route service is the most reliable and cost-effective solution. Postal Service Comment at 10-11, 15.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates a total annual savings of \$52,319. Final Determination at 4. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$8,040). *Id.*

Petitioners contend that the Postal Service's estimate of annual savings is inaccurate due to the ongoing lease obligation as well as the cost of replacement service. Participant Statement at 3. The record indicates that the lease for the Ogden post office does not include an early termination clause and expires on December 31, 2015. Administrative Record, Item No. 15. Therefore, no savings attributable to the lease will materialize for almost 4 years. Additionally, the Postal Service states that there will be no replacement cost to close the Ogden post office if customers maintain post office boxes at the Ashdown post office, but if all Ogden customers choose rural route service there will be an additional annual cost of approximately \$7,803. Postal Service Comments at 3. The estimated annual savings until the lease ends would then be reduced to \$44,279, or \$36,476 if all customers choose rural route service. Postal Service Comments at 14. The Postal Service believes that it will still achieve worthwhile savings. *Id.*

The Commission has previously observed that the Postal Service should include in its estimate of savings those costs likely to be eliminated by the closing. The Ogden post office postmaster retired on January 2, 2010. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. *Id.* at 5. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67 United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; and

Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Ogden post office has been staffed by an OIC for approximately 2 years, even assuming the use of the presumably lower OIC salary as well as the ongoing lease obligation and cost of replacement service, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Ogden post office is affirmed.¹⁰

It is ordered:

The Postal Service's determination to close the Ogden, Arkansas post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

¹⁰ See footnote 3, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Ogden post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on January 2, 2010. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the record that must be corrected on remand.

In addition, the economic analysis identified in the Final Determination does not fully account for the costs of replacement of rural or contract delivery service for the 184 customers currently provided post office boxes who opt not to use post office boxes in another community.

Furthermore, the building lease expires on December 31, 2015 and does not contain an early termination clause. As a result, no savings attributable to the lease will materialize for almost four years, making the savings calculation inaccurate during that period.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the record and present a more considered evaluation of potential savings.

The Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Ogden, Arkansas and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The current lease does not terminate until December 31, 2015, and does not have a 30-day termination clause. Administrative Record, Item 15 at 1. The Postal Service should note that any savings from the lease will not be realized for more than three years.

In addition, the Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since January 2010, not an EAS-13 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Ogden post office and should be remanded.

Nanci E. Langley